

Samuel Castor, Esq.
Nevada Bar No. 11532
SWITCH, LTD.
7135 S. Decatur Blvd.
Las Vegas, Nevada 89118

F. Christopher Austin, Esq.
Nevada Bar No. 6559
caustin@weidemiller.com
WEIDE & MILLER, LTD.
10655 Park Run Drive, Suite 100
Las Vegas, NV 89144
Tel: (702) 382-4804
Fax: (702) 382-4805

Attorneys for Plaintiff Criminal Productions, Inc.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SWITCH, LTD. a Nevada limited liability
company,

Plaintiff,

vs.

STEPHEN FAIRFAX; MTECHNOLOGY;
and DOES 1 through 10; ROE ENTITIES
11 through 20, inclusive,

Defendants.

Case No.: 2:17-cv-02651-GMN-VCF

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION FOR
TEMPORARY STAY OF DISCOVERY**

Plaintiff Switch, Ltd. ("Switch"), hereby files its opposition to the Motion for Temporary Stay of Discovery (ECF 22) brought by Defendants Stephen Fairfax ("Fairfax") and MTechnology ("MTech") (collectively "Defendants").

I. BACKGROUND AND INTRODUCTION

Plaintiff brought this action after learning that Defendants had violated their non-disclosure agreements with Plaintiffs to participate in the development of a competing data center. (*See e.g.* Complaint (ECF 1-1), Motion for Preliminary Injunction, Statement of Facts (ECF 7).) Defendants' illicit disclosures prior to the publication of any patents of Plaintiff gave the competing data center an unlawful strategic advantage permitting it to utilize Plaintiff's technology and unfairly solicit and secure Plaintiffs customers and prospective customers. *Id.*

1 Once the patents issued, Switch brought a patent infringement action against that competing data
 2 center (Aligned Data Centers) in in the Eastern District of Texas. Complaint, *Switch, Ltd., v.*
 3 *Aligned Data Centers LLC*, 2:17-cv-574 (E.D.Tex 2017). (*See* Declaration of F. Christopher
 4 Austin, at ¶2, attached hereto as Exhibit 1.) Switch also attempted to include Defendants in that
 5 action, but that court lacked personal jurisdiction which Defendants would not waive, requiring
 6 Switch to bring the action here. *Id.* at ¶4.

7 Contrary to Defendants' claim, Plaintiff has propounded written discovery on Defendants
 8 as Plaintiff is privileged to do under the Rules of Civil Procedure. (*See* March 20, 2018, email
 9 propounding Request for Production on Defendants, attached hereto as Exhibits 2, 3, and 4.)
 10 However, because Defendants understand that until the parties hold a Rule 26(f) conference
 11 Defendants will not be obligated to respond to such discovery requests, Fed.R.Civ.P. 26(d)(1),
 12 Defendants refused to participate in such a conference and instead brought the instant motion to
 13 stay discovery. (Exhibit 1 at ¶5.)

14 Defendants seek a stay of discovery for the improper purpose of avoiding the production
 15 of documents responsive to the discovery propounded upon them on the pretext that the scope of
 16 discovery could change upon the Court's ruling on Defendants' pending Motion to Dismiss. (*See*
 17 *generally* Motion to Stay (ECF 22).) However, because the Motion to Dismiss (ECF 7), not only
 18 is unlikely to, but cannot, dispose of all the claims in this case and because all of the claims arise
 19 from the same facts and circumstances—Defendants breach of their non-disclosure obligations—
 20 the scope of discovery will not be materially narrowed. Accordingly, there is no compelling
 21 reason to disregard the discovery rules, permit Defendants to avoid their obligations under Rule
 22 26(f), and further delay this case.

23 **II. LEGAL ARGUMENT**

24 **A. No Stay is Warranted by the Delay of the Parties in Commencing a Rule 26(f)** 25 **Conference, Nor Does Such a Delay or Waive the Requirement for the Same.**

26 The Federal and Local Rules of civil procedure provide no support for a stay of discovery
 27 pending the Court's ruling on a motion to dismiss. As acknowledged by Defendants in their
 28 Motion, even though Plaintiff has propounded discovery on Defendants, Defendants are under no

1 obligation to respond to such requests until the parties hold a Rule 26(f) conference. Fed.R.Civ.P.
2 26(d)(1).

3 Defendants' behavior is contrary to the underlying purpose and processes implemented
4 under the federal discovery rules. The rules establish a party-driven discovery process that ideally
5 would not require significant court intervention and that is to commence with the production of
6 initial disclosures "without awaiting a discovery request" at all. Fed.R.Civ.P. 26(a)(1)(A). The
7 plaintiff is to then "initiate the scheduling of the conference required by Fed.R.Civ.P. 26(f)," and
8 upon the issuance of a scheduling order by the court, the parties are to independently engage in
9 written discovery, the taking of depositions, and the supplementation of initial disclosures, all
10 without any required court intervention. LR II 26-1; Fed.R.Civ.P. 26(f).

11 As acknowledged by Defendants, Plaintiff has attempted to initiate the scheduling of the
12 "required" Rule 26(f) conference. (Motion (ECF 22) at 3.) Rather than participate, Defendants
13 filed the instant Motion, incorrectly claiming that because Plaintiffs did so later than that provided
14 by the Rules, the entire process must now be resolved by a hearing before the Court. *Id.* at 4. Not
15 so. Aside from the submission of a proposed Rule 26(f) Scheduling Order, no court intervention
16 or hearing is required by the Rules, even if the process is commenced later than provided by the
17 Rules, and Defendants point to no rule, legal precedent or holding to the contrary. LR II 26-1.

18 Similarly Rule 16 and LR II 16-1 are all premised on the commencement of a Rule 26(f)
19 discovery conference and the entry of a discovery scheduling order. Fed.R.Civ.P 16; LR11 16-1.
20 None of these rules are waived or avoided by the filing of a motion to dismiss.

21 Further, a delay in the commencement of discovery or the scheduling of a Rule 26(f)
22 conference neither waives the requirement for holding one nor provides any legal justification at
23 all for staying discovery. *Id.* Contrary to Defendants' claim that a Rule 26(f) Conference should
24 not now proceed until the parties "appear before the Court for special scheduling review," (Motion
25 (ECF 22) at 4) no such hearing is required by the Rules. The Rules require no hearing even when
26 the proposed schedule varies from the standard set forth in the Rules. LR II 26-1(a). For this
27 reason, Defendants' claim that a hearing is required because discovery cannot now be completed
28 within 180 days of Defendants' appearance, (Motion at 4) also is without legal support. Local

1 Rule 26-1 anticipates that circumstances may dictate “special scheduling” is required for certain
 2 cases and provides a means for securing such special scheduling without requiring court
 3 intervention by merely noting that the proposed schedule varies from the standard proposed
 4 schedule and explaining why. LR II 26-1(a).

5 Thus, the mere delay in the commencement of discovery in this matter does not provide
 6 any basis legally or factually for requiring a hearing prior to the commencement of discovery or
 7 for granting a stay at all.

8 **B. A Stay is Not Warranted Pending a Ruling on a Motion to Dismiss Absent a**
 9 **Strong Showing that the Motion Will Dispose of the Entire Case.**

10 A stay is not warranted because the pending motion to dismiss will neither dispose of the
 11 case nor the areas in which discovery is sought. *See Sollida v. Dep’t Fish & Wildlife*, 288 F.R.D.
 12 500, 506 (D. Nev. 2013) (reversed on other grounds) citing *Skellerup Indus. Ltd. v. City of L.A.*,
 13 163 F.R.D. 598, 600-01 (C.C. Cal 1995) (finding that “if the Federal Rules contemplated a motion
 14 to dismiss under Rule 12(b)(6) would stay discovery, the Rules would contain such a provision,
 15 and finding that a stay of discovery is directly at odds with the need for expeditious resolution of
 16 litigation.”). As such, the Ninth Circuit rule is that “a district court may stay discovery *only* when
 17 it is *convinced* that the Plaintiff will be unable to state a claim for relief.” *Sollida*, 288 F.R.D. at
 18 502, citing *Wood v. McEwen*, 644 F.2d 797, 801-802, (9th Cir. 1981) (emphasis added).

19 In this District, to determine whether a stay is appropriate, the movant must show and the
 20 court must preliminarily find:

- 21 (1) the pending motion [to dismiss] is potentially *dispositive of the entire case*
 22 or at least dispositive of the issue on which discovery is sought, *and*
- 23 (2) the motion can be decided without additional discovery.

24 *Mendoza v. Amalgamated Transit Union Int’l*, 2018 U.S. Dist. LEXIS 48212 *4-5 (D.Nev. 2018)
 25 (emphasis added) citing, *Sollida*, 288 F.R.D. at 506. Further, the party seeking a stay “carries the
 26 heavy burden of making a ‘strong showing’ why discovery should be denied.” *Turner Broad.*
 27 *Sys., Inc. v. Tracinda Corp.*, 175 F.R.D. 554, 556 (D. Nev. 1997). “[B]road or conclusory
 28 statements concerning the need for protection are insufficient” to warrant a stay pending a motion

1 to dismiss. *Sollida*, 288 F.R.D. at 503, citing *Gray v. First Winthrop Corp.*, 133 F.R.D. 39, 40
2 (N.D. Cal. 1990).

3 The default assumption is that discovery should go forward while a dispositive motion is
4 pending. “*Absent extraordinary circumstances*, litigation should not be delayed simply because
5 a non-frivolous motion has been filed.” *Mendoza* 2018 U.S. Dist. LEXIS 48212 *5 (emphasis
6 added), quoting *Trzaska v. Int’l Game Tech.*, 2011 U.S. Dist. LEXIS 39275, 2011 WL 1233298,
7 at *3 (D. Nev. Mar. 29, 2011). Such “extraordinary circumstances” where a stay may be
8 appropriate are limited to those where the complaint was “utterly frivolous, or filed merely for
9 settlement value.” *Turner*, 175 F.R.D. at 175, or where the motion is based on a lack of
10 jurisdiction, improper venue, or immunity. *Sollida*, 288 F.R.D. at 504.

11 **C. A Stay is Not Warranted As Defendants Have Made No Showing that the**
12 **Motion to Dismiss Will Dispose of the Entire Case.**

13 Here, Defendants have not met the “heavy burden of making a ‘strong showing’ for why
14 discovery should be denied.” They have made no showing at all that the Complaint is “utterly
15 frivolous, or filed merely for settlement value,” the Motion to Dismiss not only does not assert
16 any claims based on lack of jurisdiction, improper venue, or immunity, it cannot dispose of the
17 “entire case” or the issues on which discovery is sought. As such, the Motion for a Stay should
18 be denied.

19 ***1. The Complaint is neither frivolous nor was it filed merely for settlement***
20 ***value and Defendants have made no showing to the contrary.***

21 Defendants’ have made no claim that the Complaint in this action is either frivolous or
22 made merely for settlement value. (*See generally* Motion (ECF 22).) To make such a showing,
23 Defendants would have to have presented evidence or argument showing that the Complaint is
24 without any factual support or that its claims are barred as a matter of law. Defendants have made
25 no such showing, let alone the “strong showing” required to overcome the “default assumption”
26 that a stay should not be granted. *Mendoza* 2018 U.S. Dist. LEXIS 48212 *5.

27 The factual assertions set forth in the Complaint are supported by exhibits filed with the
28 Complaint (ECF 1-1) or by those filed with the Motion for Preliminary Injunction (ECF 7).

Moreover, Defendants, while quibbling about which of the two Defendants signed the non-disclosure agreements Switch alleges both Defendants breached and while denying their actions constituted a breach, do not deny: (i) the existence of such agreements, (ii) that one of the Defendants, at least is bound by the agreements, (iii) the underlying facts regarding circumstances of their executing such agreements, or (iv) the fact that they were involved in the development of Aligned’ s competing data center. (See Mot. Dismiss (ECF 8) and Opposition to Mot. Dismiss (ECF 16). Defendants’ denial of the *extent* of such involvement and their challenge to the *scope* and breadth of the trade secrets Switch maintains were disclosed to them, do not rise to the level of a “strong showing” that the Complaint was frivolous. Rather, they identify just why discovery is needed and should proceed: to test the factual disparities asserted by the parties.

2. The Motion to Dismiss will not dispose of the entire case or the issues on which discovery is sought.

To overcome the presumption that discovery should proceed pending a motion to dismiss, Defendants must meet the “heavy burden of making a ‘strong showing’” in their motion to stay that their motion to dismiss will dispose of the “entire case”. *Mendoza* 2018 U.S. Dist. LEXIS 48212 *5. To dispose of the entire case, Defendants must also make a “strong showing” that the Court cannot and will not permit Plaintiff to amend any dismissed claim despite the procedural and policy bias in favor of liberally granting requests to amend dismissed claims under Rule 15. Fed.R.Civ.P. 15 (“The court should freely give leave [to amend]”). And because “broad or conclusory statements concerning the need for protection are insufficient” to warrant a stay pending a motion to dismiss, *Sollida*, 288 F.R.D. at 503, Defendants necessarily must show why *every claim* will both fail and why the court cannot permit Plaintiff to reassert it in an amended complaint.

Defendants have made no such showings at all. To the contrary, all Defendants have done is make “broad or conclusory statements” and those statement—far from supporting a stay—argue persuasively against it. Defendants’ mere conclusory reference to their Motion to Dismiss is inadequate to overcome the “heavy burden” required. This is because none of the bases for that motion constitute an “extraordinary circumstance”. *Mendoza* 2018 U.S. Dist. LEXIS 48212 *5;

1 *Turner*, 175 F.R.D. at 175; *Sollida*, 288 F.R.D. at 504. There is no claim to dismiss for lack of
2 jurisdiction; there is no claim to dismiss for improper venue; and there is no claim of immunity
3 from suit. *Sollida*, 288 F.R.D. at 504.

4 Rather, Defendants argue in their Motion to Dismiss (but not in their Motion for Stay) that
5 Plaintiffs trade secret claims (Claims 6 and 7) must fail because they are subsumed by disclosed
6 patents **OR** they must be identified with “greater specificity.” (Mot. Dismiss (ECF 7) at 6-10.)
7 Regardless of Switch’s substantive opposition to this claim,¹ on its face Defendants’ claim cannot
8 dispose of the “entire case,” because it requests as a remedy that the Court order Plaintiff to
9 reassert its trade secret claims, just with greater specificity. *Id.* This part of the Motion to Dismiss,
10 therefore, merely invites the court to order Plaintiff to amend its complaint. It does not and cannot
11 dispose of the entire case. This alone is sufficient to deny the request for a stay.

12 Defendants then quibble that the breach of contract claims arising from Defendants breach
13 of non-disclosure agreements with Switch are limited only to Defendant MTech, and that
14 Defendant Fairfax did not sign the same in his individual capacity. (Mot. Dismiss (ECF 7) at 12-
15 14.) Switch rejects this notion and asserts that Fairfax is equally bound by the agreements. (Opp.
16 Mot. Dismiss at 2, 10-12.) But for purposes of Defendant’s Motion for a Stay, Plaintiffs’
17 argument is unnecessary to prevail. That is because, here too, the Motion to Dismiss is incapable
18 of disposing of the “entire case,” because Defendants admit that, at a minimum, the breach of
19 contract claims remain viable as against at least one of the Defendants. Thus, the Motion to
20 Dismiss cannot as a matter of law dispose of the “entire case”.

21 Because all of Switch’s claims arise from the same facts and circumstances—the
22 disclosure of confidential information to Defendants and their wrongful disclosure of the same to
23 a competitor—the survival of any one claim for trade secret misappropriation or breach of a non-
24 disclosure agreement will necessarily implicate discovery into the same facts and circumstances
25 as would be required to assert all of the claims. Thus, contrary to the unsupported “broad or
26

27
28 ¹ That (i) the trade secrets alleged were still trade secrets at the time of wrongful disclosure, and (ii) included trade
secrets that were never incorporated into any issued patent. (Opp. Mot. Dismiss (ECF 16) at 2-9.)

1 conclusory statements” of Defendants to the contrary, the Motion to Dismiss also is incapable of
2 materially narrowing the scope of discovery in this case.

3 Because Defendants’ Motion to Dismiss seeks relief in the form of a request that the Court
4 order Plaintiff to amend its trade secret claims and does not seek to dispose all of the claims
5 asserted, it cannot as a matter of law make the required “strong showing” that it will dispose of
6 the “entire case” or limit the scope of discovery as required to overcome the presumption that
7 discovery should proceed pending a motion to dismiss, and the motion for stay should be denied.

8 **III. CONCLUSION**

9 For the foregoing reasons, Plaintiff respectfully requests the Court deny Defendants’
10 Motion for a Temporary Stay of Discovery.

11 Dated: June 4, 2018

12 Respectfully Submitted,

13 /s/ F. Christopher Austin

14 F. Christopher Austin (NV Bar No. 6559)

15 caustin@weidemiller.com

16 **WEIDE & MILLER, LTD.**

17 10655 Park Run Drive, Suite 100

18 Las Vegas, NV 89144

19 Tel: 702-382-4804

20 Fax: 702-382-4805

21 *Attorneys for Plaintiff Switch, Ltd.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of WEIDE & MILLER, LTD. and that on June 4, 2018, I served a full, true and correct copy of the foregoing **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION FOR TEMPORARY STAY OF DISCOVERY** via CM-ECF to the addressees listed below:

Marc J. Randazza, Esq.
Ronald D. Green, Esq.
Alex J. Shepard, Esq.
Randazza Legal Group, PLLC
2764 Lake Sahara Drive, Suite 109
Las Vegas, NV 89117
702-420-2001
efc@randazza.com

*Attorneys for Defendants STEPHEN
FAIRFAX and MTECHNOLOGY*

/s/ F. Christopher Austin
An employee of Weide & Miller, Ltd

EXHIBIT 1

EXHIBIT 1

1 F. Christopher Austin, Esq.
2 Nevada Bar No. 6559
3 *caustin@weidemiller.com*
4 **WEIDE & MILLER, LTD.**
5 10655 Park Run Drive, Suite 100
6 Las Vegas, NV 89144
7 Tel: (702) 382-4804
8 Fax: (702) 382-4805

9 *Attorneys for Plaintiff Criminal Productions, Inc.*

10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

12 SWITCH, LTD. a Nevada limited liability
13 company,

14 Plaintiff,

15 vs.

16 STEPHEN FAIRFAX; MTECHNOLOGY;
17 and DOES 1 through 10; ROE ENTITIES
18 11 through 20, inclusive,

19 Defendants.

Case No.: 2:17-cv-02651-GMN-VCF

**DECLARATION OF F. CHRISTOPHER
AUSTIN IN SUPPORT PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR TEMPORARY STAY OF
DISCOVERY**

20 I, F. Christopher Austin, declare under penalty of perjury under the laws of the United
21 States that the following is true and correct:

22 1. I am counsel for Plaintiff, Switch, Ltd. ("Switch") in the above captioned matter.
23 I am over the age of 21, under no disability, and am competent to testify to the matters contained
24 in this declaration. I make this declaration in support of Plaintiff's Opposition to Defendants'
25 Motion for Temporary Stay of Discovery (ECF No. 22).

26 2. Switch brought a patent infringement action against a competing data center
27 (Aligned Data Centers) in in the Eastern District of Texas to whom Switch alleges Defendants in
28 this action disclosed Switch confidential information in violation of non-disclosure agreements
Defendants had with Switch. The action in Texas is captioned *Switch, Ltd., v. Aligned Data
Centers LLC*, 2:17-cv-574 (E.D.Tex 2017).

3. Switch also attempted to include Defendants in that action, but due to recent
precedent, personal jurisdiction could not be maintained against Defendants in Texas, and since

1 Defendants would not waive jurisdiction, Switch had to bring the action against them here.

2 4. On March 20, 2018, my office emailed separate Request for Production on each of
3 the Defendants. Attached as Exhibit 2 to the Opposition is a true and accurate copy of the March
4 20, 2018 email to which the discovery was attached. Attached as Exhibits 3 and 4 to the
5 Opposition are true and accurate copies of the requests for production propounded on each
6 Defendant.

7 5. On May 10, 2018, I asked for dates on which to hold a Rule 26(f) conference so
8 we could get a scheduling order filed and secure responses to our discovery requests. However
9 Defendants refused to participate in such a conference and instead filed their motion to stay
10 discovery.

11 DATED this 4th day of June, 2018.

12 /s/ F. Christopher Austin
13 F. Christopher Austin, Esq.
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 2

EXHIBIT 2

F. Christopher Austin

From: Sally Wexler
Sent: Monday, March 19, 2018 3:21 PM
To: efc@randazza.com
Cc: F. Christopher Austin
Subject: Switch/Fairfax and Switch/MTECHNOLOGY
Attachments: FCA-w-0676 Requests for Production of Documents FAIRFAX_fca.pdf; FCA-w-0677 RFP MTECHNOLOGY.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Attached please find the above documents. These documents are also being deposited in the mail to you this afternoon.

Best Regards,

Sally Wexler
Paralegal

Weide & Miller, Ltd.

Patents, Trademarks, Copyrights, Trade secrets and Related Litigation

10655 Park Run Drive, Suite 100
Las Vegas, NV 89144
702-382-4804 (voice)
702-382-4805 (facsimile)
swexler@weidemiller.com

The only Nevada-based Tier 1 patent law firm as ranked by U.S. News & World Report for 2014, 2015, 2016 and 2017

This communication is for its intended recipient only, and may contain information that is privileged, confidential and exempt from disclosure under applicable law. If you are not the intended recipient or the employee or agent responsible for delivering this communication to the intended recipient, you are hereby notified that any unauthorized use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone (702-382-4804) or e-mail reply, delete it from your system, and destroy any hard copy you may have printed. Thank you.

EXHIBIT 3

EXHIBIT 3

RFP

F. Christopher Austin, Esq.
Nevada Bar No. 6559
caustin@weidemiller.com

Ryan Gile, Esq.
Nevada Bar No. 8807
rgile@weidemiller.com

WEIDE & MILLER, LTD.

10655 Park Run Drive, Suite 100
Las Vegas, NV 89144
Tel: (702) 382-4804
Fax: (702) 382-4805

Samuel Castor, Esq.
Nevada Bar No. 11532

SWITCH, LTD.

7135 S. Decatur Blvd.
Las Vegas, Nevada 89118

Attorneys for Plaintiff SWITCH, LTD.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SWITCH, LTD. a Nevada limited liability
company,

Plaintiff,

vs.

STEPHEN FAIRFAX; MTECHNOLOGY; and
DOES 1 through 10; ROE ENTITIES 11
through 20, inclusive,

Defendants.

Case No.: 2:17-cv-2651-GMN-VCF

**PLAINTIFF SWITCH, LTD. FIRST SET
OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT
STEPHEN FAIRFAX**

PROPOUNDING PARTY: Plaintiff SWITCH, LTD.

RESPONDING PARTY: Defendant FAIRFAX

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff SWITCH, LTD.,
("SWITCH") hereby requests that Defendant Stephen Fairfax ("FAIRFAX") produce the
documents and things identified below:

INTRODUCTORY STATEMENT

A. Pursuant to Nevada Rule of Civil Procedure 26(e), the following **requests for production of documents and things are continuing and must be supplemented if your responses change during the course of discovery.**

B. To the extent that any information/documentation requested by these Requests for Production is unknown to you, so state, and set forth such remaining information as is known by you. If any estimate or approximation can reasonably be made in place of unknown information, set forth your best estimate or approximation, clearly designated as such, in place of the unknown information, and describe the basis upon which the estimate or approximation is made.

C. The omission of any item from your responses shall be deemed a representation that the item is unknown to you.

D. In construing these Requests to Produce, the terms “refer to” shall include any and all logical and factual connections to the subject of the discovery request as specified.

E. Use of the term “**data**” shall include but not be limited to information regardless of form, such as documents, emails to or from business and/or personal accounts, text messages, calendar invites, notes, application data, videos, photographs, audio or visual recordings, meta data, blogs, tweets, social media postings, correspondence, designs, blue prints, schematics, opinions, assessments, analysis, etc., and all versions of the same, which are germane to the Request.

F. Use of the term “plaintiff” or “you” shall mean STEPHEN FAIRFAX.

G. All singular nouns are to be construed as plural and plural construed as singular.

///

1 H. In the event that you refuse to respond to any Request to Produce, or portion
2 thereof, on the grounds that it is subject to an attorney-client privilege or attorney work
3 product privilege, you are required to:

- 4 a. state the nature of the privilege asserted;
5 b. state the facts relied upon in support of the claim or privilege;
6 c. identify all persons having knowledge or any facts related to the claim
7 or privilege; and
8 d. identify all events, transactions, or occurrences related to the claim of
9 privilege.
10

11 **DOCUMENTS REQUESTED**

12 **REQUEST NO. 1:**

13 Please produce complete and accurate copies of any and all DATA regarding Aligned
14 from January 1, 2011, to the present.

15 **REQUEST NO. 2:**

16 Please produce complete and accurate copies of all agreements between FAIRFAX
17 and Aligned.
18

19 **REQUEST NO. 3:**

20 Please produce complete and accurate copies of all agreements between Defendant
21 MTECHNOLOGY and Aligned.
22

23 **REQUEST NO. 4:**

24 Please produce complete and accurate copies of any and all DATA related to Jones
25 Lang LaSalle from January 1, 2011, to the present.

26 **REQUEST NO. 5:**

27 Please produce complete and accurate copies of any and all DATA related to Aligned
28 Energy from January 1, 2011, to the present.

1 **REQUEST NO. 6:**

2 Please produce complete and accurate copies of any and all DATA related to Inertech
3 from January 1, 2011 to the present.

4 **REQUEST NO. 7:**

5 Please produce complete and accurate copies of any and all DATA related to Uber
6 from January 1, 2011, to the present.

7 **REQUEST NO. 8:**

8 Please produce complete and accurate copies of any and all DATA related to eBay
9 from January 1, 2011, to the present.

10 **REQUEST NO. 9:**

11 Please produce complete and accurate copies of any and all DATA related to PayPal
12 from January 1, 2011, to the present.

13 **REQUEST NO. 10:**

14 Please produce complete and accurate copies of any and all DATA related to Theresa
15 Gardner from January 1, 2011, to the present.

16 **REQUEST NO. 11:**

17 Please produce complete and accurate copies of any and all DATA related to Mark
18 Bauer from January 1, 2011, to the present.

19 **REQUEST NO. 12:**

20 Please produce complete and accurate copies of any and all DATA related to Carter
21 Robinson from January 1, 2011, to the present.

22 **REQUEST NO. 13:**

23 Please produce complete and accurate copies of any all DATA related to Marew
24 Klokkenja from January 1, 2011, to the present.

1 **REQUEST NO. 14:**

2 Please produce complete and accurate copies of any and all DATA related to Bret
3 Davis from January 1, 2011, to the present.

4 **REQUEST NO. 15:**

5 Please produce complete and accurate copies of any and all DATA related to Mike
6 Lewis from January 1, 2011, to the present.

7 **REQUEST NO. 16:**

8 Produce complete and accurate copies of any and all DATA related to Dean Nelson
9 from January 1, 2011, to the present.

10 **REQUEST NO. 17:**

11 Produce complete and accurate copies of any and all DATA related to Mazen
12 Rawashdeh from January 1, 2011, to the present.

13 **REQUEST NO. 18:**

14 Please produce complete and accurate copies of any and all DATA related to Thomas
15 Price from January 1, 2011, to the present.

16 **REQUEST NO. 19:**

17 Please produce complete and accurate copies of any and all DATA related to Paul
18 Santana from January 1, 2011, to the present.

19 **REQUEST NO. 20:**

20 Produce complete and accurate copies of any and all DATA related to Stephen
21 Harlett from January 1, 2011, to the present.

22 **REQUEST NO. 21:**

23 Please produce complete and accurate copies of any and all DATA related to Richard
24 Reyher from January 1, 2011, to the present.

1 **REQUEST NO. 22:**

2 Please produce complete and accurate copies of any and all DATA related to Seth
3 Feldman from January 1, 2011, to the present.

4 **REQUEST NO. 23:**

5 Please produce complete and accurate copies of any and all DATA related to Devin
6 Wenig from January 1, 2011, to the present.

7 **REQUEST NO. 24:**

8 Please produce complete and accurate copies of any and all DATA related to Jakob
9 Carnemark from January 1, 2011, to the present.

10 **REQUEST NO. 25:**

11 Please produce complete and accurate copies of any and all DATA related to Andrew
12 Schaap from January 1, 2011, to the present.

13 **REQUEST NO. 26:**

14 Please produce complete and accurate copies of any and all DATA related to Stephen
15 Smith from January 1, 2011, to the present.

16 **REQUEST NO. 27:**

17 Please produce complete and accurate copies of any and all DATA related to
18 Rajendran Avadaippan from January 1, 2011, to the present.

19 **REQUEST NO. 28:**

20 Please produce complete and accurate copies of any and all video footage, including
21 b-roll footage, YOU received and/or have in YOUR possession, with regard to the
22 ALIGNED videos.

23 ///

24 ///

1 **REQUEST NO. 29:**

2 Please produce complete and accurate copies of any and all payments made to YOU
3 by Aligned, or any Aligned employees.

4 **REQUEST NO. 30:**

5 Please produce complete and accurate copies of any and all communications
6 regarding payments received by MTECHNOLOGY and/or YOU from Aligned or any
7 Aligned employees.

8 **REQUEST NO. 31:**

9 Please produce complete and accurate copies of any and all bank records from 2011
10 to present in YOUR control reflecting financial transactions with individuals or entities
11 affiliated with Aligned, Aligned Energy, Inertech, eBay, and/or Paypal.

12 **REQUEST NO. 32:**

13 Please produce complete and accurate copies of any and all of YOUR cell phone
14 records evidencing communications with individuals or entities affiliated with Aligned,
15 Aligned Energy, Inertech, eBay, and/or Paypal between yourself and from 2010 to present.

16 **REQUEST NO. 33:**

17 Please produce complete and accurate copies of any and all DATA evidencing
18 Aligned designs created between January 1, 2011, and the present.

19 **REQUEST NO. 34:**

20 Please produce complete and accurate copies of DATA evidencing Aligned Energy
21 designs created between January 1, 2011, and the present.

22 **REQUEST NO. 35:**

23 Please produce complete and accurate copies of DATA evidencing Inertech designs
24 created between January 1, 2011, and the present.

1 **REQUEST NO. 36:**

2 Please produce complete and accurate copies of DATA evidencing YOUR data center
3 designs created between January 1, 2011, and the present.

4 **REQUEST NO. 37:**

5 Please produce complete and accurate copies of any and all DATA related to Switch
6 from January 1, 2011, to the present.

7 **REQUEST NO. 38:**

8 Please produce complete and accurate copies of any and all DATA related to Rob
9 Roy from January 1, 2011, to the present.

10 **REQUEST NO. 39:**

11 Please produce all DATA related to your design work for Aligned.

12 **REQUEST NO. 40:**

13 Please produce complete and accurate copies of your analysis of Aligned's designs
14 created between January 1, 2011, and the present.

15 **REQUEST NO. 41:**

16 Please produce complete and accurate copies of your analysis of Aligned Energy's
17 designs created between January 1, 2011, and the present.

18 **REQUEST NO. 42:**

19 Please produce complete and accurate copies of your analysis of Inertech's designs
20 created between January 1, 2011, and the present.

21 **REQUEST NO. 43:**

22 Please produce complete and accurate copies of all collaborations with Aligned
23 regarding Aligned's data center designs created between January 1, 2011, and the present.

24 ///

1 **REQUEST NO. 44:**

2 Please produce all DATA related to your retention as a consultant with Aligned.

3 **REQUEST NO. 45:**

4 Please produce complete and accurate copies of all DATA regarding Aligned's data
5 center designs created between January 1, 2011, and the present.
6

7 DATED this 16th day of March, 2018.

8 **WEIDE & MILLER, LTD.**

9
10 /s/ F. Christopher Austin
11 F. Christopher Austin
12 caustin@weidemiller.com
13 Ryan Gile
14 rgile@weidemiller.com
15 Bank of Nevada Bldg., 5th Floor
16 7251 W. Lake Mead Blvd., Ste. 530
17 Las Vegas, NV 89128
18 *Attorneys for Plaintiff SWITCH, LTD.*
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Weide & Miller, Ltd. and that on March 19, 2018, I served a full, true and correct copy of the foregoing **PLAINTIFF SWITCH, LTD. FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT STEPHEN FAIRFAX** by email and regular U.S. mail, with postage duly prepaid thereon, addressed to the following:

Marc J. Randazza, Esq.
Ronald D. Green, Esq.
Alex J. Shepard, Esq.
Randazza Legal Group, PLLC
4035 S. El. Capitan Way
Las Vegas, NV 89147
702-420-2001
efc@randazza.com
Attorneys for Defendants STEPHEN FAIRFAX and MTECHNOLOGY

/s/ Sally Wexler
An employee of Weide & Miller, Ltd.

EXHIBIT 4

EXHIBIT 4

RFP

F. Christopher Austin, Esq.
Nevada Bar No. 6559
caustin@weidemiller.com

Ryan Gile, Esq.
Nevada Bar No. 8807
rgile@weidemiller.com

WEIDE & MILLER, LTD.

10655 Park Run Drive, Suite 100
Las Vegas, NV 89144
Tel: (702) 382-4804
Fax: (702) 382-4805

Samuel Castor, Esq.
Nevada Bar No. 11532

SWITCH, LTD.

7135 S. Decatur Blvd.
Las Vegas, Nevada 89118

Attorneys for Plaintiff SWITCH, LTD.

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

SWITCH, LTD. a Nevada limited liability
company,

Plaintiff,

vs.

STEPHEN FAIRFAX; MTECHNOLOGY; and
DOES 1 through 10; ROE ENTITIES 11
through 20, inclusive,

Defendants.

Case No.: 2:17-cv-2651-GMN-VCF

**PLAINTIFF SWITCH, LTD. FIRST SET
OF REQUESTS FOR PRODUCTION OF
DOCUMENTS TO DEFENDANT
MTECHNOLOGY**

PROPOUNDING PARTY: Plaintiff SWITCH, LTD.

RESPONDING PARTY: Defendant MTECHNOLOGY

Pursuant to Federal Rules of Civil Procedure 26 and 34, Plaintiff SWITCH, LTD.,
("SWITCH") hereby requests that Defendant MTECHNOLOGY produce the documents and
things identified below:

INTRODUCTORY STATEMENT

A. Pursuant to Nevada Rule of Civil Procedure 26(e), the following **requests for production of documents and things are continuing and must be supplemented if your responses change during the course of discovery.**

B. To the extent that any information/documentation requested by these Requests for Production is unknown to you, so state, and set forth such remaining information as is known by you. If any estimate or approximation can reasonably be made in place of unknown information, set forth your best estimate or approximation, clearly designated as such, in place of the unknown information, and describe the basis upon which the estimate or approximation is made.

C. The omission of any item from your responses shall be deemed a representation that the item is unknown to you.

D. In construing these Requests to Produce, the terms “refer to” shall include any and all logical and factual connections to the subject of the discovery request as specified.

E. Use of the term “**data**” shall include but not be limited to information regardless of form, such as documents, emails to or from business and/or personal accounts, text messages, calendar invites, notes, application data, videos, photographs, audio or visual recordings, meta data, blogs, tweets, social media postings, correspondence, designs, blue prints, schematics, opinions, assessments, analysis, etc., and all versions of the same, which are germane to the Request.

F. Use of the term “plaintiff” or “you” shall mean MTECHNOLOGY, as an individual, member, partner, investor, managing member, agent, or principal on behalf of any company, entity, business, partner, including but not limited to MTECHNOLOGY.

///

1 G. All singular nouns are to be construed as plural and plural construed as
2 singular.

3
4 H. In the event that you refuse to respond to any Request to Produce, or portion
5 thereof, on the grounds that it is subject to an attorney-client privilege or attorney work
6 product privilege, you are required to:

- 7
8 a. state the nature of the privilege asserted;
9 b. state the facts relied upon in support of the claim or privilege;
10 c. identify all persons having knowledge or any facts related to the claim
11 or privilege; and
12 d. identify all events, transactions, or occurrences related to the claim of
13 privilege.

14 **DOCUMENTS REQUESTED**

15 **REQUEST NO. 1:**

16 Please produce complete and accurate copies of any and all DATA regarding
17 MTECHNOLOGY and Aligned from January 1, 2011, to the present.

18 **REQUEST NO. 2:**

19
20 Please produce complete and accurate copies of all agreements between
21 MTECHNOLOGY and Aligned.

22 **REQUEST NO. 3:**

23 Please produce complete and accurate copies of all agreements between FAIRFAX
24 and Aligned.

25 **REQUEST NO. 4:**

26
27 Please produce complete and accurate copies of any and all DATA related to Aligned
28 Energy from January 1, 2011, to the present.

1 **REQUEST NO. 5:**

2 Please produce complete and accurate copies of any and all DATA related to Inertech
3 from January 1, 2011 to the present.

4 **REQUEST NO. 6:**

5 Please produce complete and accurate copies of any and all DATA related to Uber
6 from January 1, 2011, to the present.

7 **REQUEST NO. 7:**

8 Please produce complete and accurate copies of any and all DATA related to eBay
9 from January 1, 2011, to the present.

10 **REQUEST NO. 8:**

11 Please produce complete and accurate copies of any and all DATA related to PayPal
12 from January 1, 2011, to the present.

13 **REQUEST NO. 9:**

14 Please produce complete and accurate copies of any and all DATA related to Theresa
15 Gardner from January 1, 2011, to the present.

16 **REQUEST NO. 10:**

17 Please produce complete and accurate copies of any and all DATA related to Mark
18 Bauer from January 1, 2011, to the present.

19 **REQUEST NO. 11:**

20 Please produce complete and accurate copies of any and all DATA related to Carter
21 Robinson from January 1, 2011, to the present.

22 **REQUEST NO. 12:**

23 Please produce complete and accurate copies of any all DATA related to Marew
24 Klokkenja from January 1, 2011, to the present.

1 **REQUEST NO. 13:**

2 Please produce complete and accurate copies of any and all DATA related to Bret
3 Davis from January 1, 2011, to the present.

4 **REQUEST NO. 14:**

5 Please produce complete and accurate copies of any and all DATA related to Mike
6 Lewis from January 1, 2011, to the present.

7 **REQUEST NO. 15:**

8 Please produce complete and accurate copies of any and all DATA related to Dean
9 Nelson from January 1, 2011, to the present.

10 **REQUEST NO. 16:**

11 Please produce complete and accurate copies of any and all DATA related to Mazen
12 Rawashdeh from January 1, 2011, to the present.

13 **REQUEST NO. 17:**

14 Please produce complete and accurate copies of any and all DATA related to Thomas
15 Price from January 1, 2011, to the present.

16 **REQUEST NO. 18:**

17 Please produce complete and accurate copies of any and all DATA related to Paul
18 Santana from January 1, 2011, to the present.

19 **REQUEST NO. 19:**

20 Produce complete and accurate copies of any and all DATA related to Stephen
21 Harlett from January 1, 2011, to the present.

22 **REQUEST NO. 20:**

23 Please produce complete and accurate copies of any and all DATA related to Richard
24 Reyher from January 1, 2011, to the present.

1 **REQUEST NO. 21:**

2 Please produce complete and accurate copies of any and all DATA related to Seth
3 Feldman from January 1, 2011, to the present.

4 **REQUEST NO. 22:**

5 Please produce complete and accurate copies of any and all DATA related to Devin
6 Wenig from January 1, 2011, to the present.

7 **REQUEST NO. 23:**

8 Please produce complete and accurate copies of any and all DATA related to Jakob
9 Carnemark from January 1, 2011, to the present.

10 **REQUEST NO. 24:**

11 Please produce complete and accurate copies of any and all DATA related to Andrew
12 Schaap from January 1, 2011, to the present.

13 **REQUEST NO. 25:**

14 Please produce complete and accurate copies of any and all DATA related to Stephen
15 Smith from January 1, 2011, to the present.

16 **REQUEST NO. 26:**

17 Please produce complete and accurate copies of any and all DATA related to
18 Rajendran Avadaippan from January 1, 2011, to the present.

19 **REQUEST NO. 27:**

20 Please produce complete and accurate copies of any and all video footage, including
21 b-roll footage, YOU received and/or have in YOUR possession, with regard to the
22 ALIGNED videos.
23
24
25
26
27
28

1 **REQUEST NO. 28:**

2 Please produce complete and accurate copies of any and all payments made to YOU
3 and/or FAIRFAX by Aligned or any Aligned employees.

4 **REQUEST NO. 29:**

5 Please produce complete and accurate copies of any and all communications
6 regarding payments received by YOU and/or FAIRFAX from Aligned or any Aligned
7 employees.

8 **REQUEST NO. 30:**

9 Please produce complete and accurate copies of any and all bank records from 2011
10 to present in YOUR control reflecting financial transactions with individuals or entities
11 affiliated with Aligned, Aligned Energy, Inertech, eBay, and/or Paypal.

12 **REQUEST NO. 31:**

13 Please produce complete and accurate copies of any and all DATA evidencing
14 Aligned designs created between January 1, 2011, and the present.

15 **REQUEST NO. 32:**

16 Please produce complete and accurate copies of DATA evidencing Aligned Energy
17 designs created between January 1, 2011, and the present.

18 **REQUEST NO. 33:**

19 Please produce complete and accurate copies of DATA evidencing Inertech designs
20 created between January 1, 2011, and the present.

21 **REQUEST NO. 34:**

22 Please produce complete and accurate copies of any and all DATA related to Switch
23 from January 1, 2011, to the present.

24 ///

1 **REQUEST NO. 35:**

2 Please produce complete and accurate copies of any and all DATA related to Rob
3 Roy from January 1, 2011, to the present.

4 **REQUEST NO. 36:**

5 Please produce all DATA related to your design work for Aligned.

6 **REQUEST NO. 37:**

7 Please produce complete and accurate copies of your analysis of Aligned's designs
8 created between January 1, 2011, and the present.

9 **REQUEST NO. 38:**

10 Please produce complete and accurate copies of your analysis of Aligned Energy's
11 designs created between January 1, 2011, and the present.

12 **REQUEST NO. 39:**

13 Please produce complete and accurate copies of your analysis of Inertech's designs
14 created between January 1, 2011, and the present.

15 **REQUEST NO. 40:**

16 Please produce complete and accurate copies of all collaborations with Aligned
17 regarding Aligned's data center designs created between January 1, 2011, and the present.

18 **REQUEST NO. 41:**

19 Please produce all DATA related to your and/or FAIRFAX's retention as a consultant
20 with Aligned.

21 ///

22 ///

23 ///

24 ///

1 **REQUEST NO. 42:**

2 Please produce complete and accurate copies of all DATA regarding Aligned's data
3 center designs created between January 1, 2011, and the present.

4 DATED this 16th day of March, 2018.

6 **WEIDE & MILLER, LTD.**

7 /s/ F. Christopher Austin

8 F. Christopher Austin

9 caustin@weidemiller.com

10 Ryan Gile

rgile@weidemiller.com

Bank of Nevada Bldg., 5th Floor

11 7251 W. Lake Mead Blvd., Ste. 530

12 Las Vegas, NV 89128

13 *Attorneys for Plaintiff SWITCH, LTD.*

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Weide & Miller, Ltd. and that on March 19, 2018, I served a full, true and correct copy of the foregoing **PLAINTIFF SWITCH, LTD. FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT MTECHNOLOGY** by email and regular U.S. mail, with postage duly prepaid thereon, addressed to the following:

Marc J. Randazza, Esq.
Ronald D. Green, Esq.
Alex J. Shepard, Esq.
Randazza Legal Group, PLLC
4035 S. El. Capitan Way
Las Vegas, NV 89147
702-420-2001
efc@randazza.com
Attorneys for Defendants STEPHEN FAIRFAX and MTECHNOLOGY

/s/ Sally Wexler
An employee of Weide & Miller, Ltd.